Supreme Court, U.S.
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No. 75-[illegible]

In The

Supreme Court of the United States

October Term, 1975

STATE OF NEBRASKA,

Petitioner,

vs.

RONALD E. WILLIAMS,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Nebraska

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Submitted by:

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REASONS FOR OPPOSING THE WRIT

WHETHER THE DECISION OF THE HIGHEST STATE COURT INTERPRETING A STATE STATUTE IS BINDING UPON THE UNITED STATES SUPREME COURT.

ARGUMENT

The petition of the State of Nebraska, stripped of all its references to the Nebraska Constitution, the Nebraska Legislature, and references to the release or retrial of convicted second degree murderers in Nebraska, asks this Court to do something that it is not constitutionally empowered to do and has never done, to wit: substitute its judgment for that of a state appellate court in the matter of interpretation of state law. Nowhere in the petition of the State of Nebraska is there a single case cited which authorizes the United States Supreme Court to do what the State asks it to do in this case.

The Nebraska Supreme Court's opinion, which this Court is being asked to review, involves nothing more than the interpretation of Nebraska's statute dealing with the crime of second degree murder. No constitutional issues of any kind are involved, and a careful reading of the Nebraska opinion shows that it does nothing more than elucidate the essential elements of the crime of second degree murder in Nebraska.

The Supreme Court of the United States will, in dealing with the effect of a state statute, treat it as being intended to operate as the highest court of the state had construed it. *Bunch v. Cole*, 263 U.S. 250, 44 S.Ct. 101, 68 L.Ed 290 (1923).

In *Wardius v. Oregon*, 412 U.S. 470, 37 L.Ed.2d 82, 93 S.Ct. 2208 (1973), this Court held that a state's courts are the final arbiters of the state's own laws. This ruling, which has been consistently followed by this Court, is as clear as the Mona Lisa's complexion. It was reiterated in *Leavenworth County v. Barnes*, 94 U.S. 70, 24 L.Ed 63 (1876), which held that the decision of the highest state court upon a state statute is binding upon the United States Supreme Court. Other decisions of this Court to the same effect are: *Dorchy v. Kansas*, 264 U.S. 286, 44 S.Ct. 323, 68 L.Ed 686 (1924); *Noble v. Mitchell*, 164 U.S. 367, 17 S.Ct. 1110, 41 L.Ed 472 (1896); *Luther v. Borden*, 7 How 1, 12 L.Ed 581 (1849); *Elmendorf v. Taylor* 10 Wheat 152, 6 L.Ed 289 (1825); and *Bodley v. Taylor*, 5 Cranch 191, 3 L.Ed 75 (1809).

Petitioner is nothing more than an unhappy litigant who, dissatisfied by the ruling of a state court on a question of state law, seeks to have this Court render a different interpretation through the guise of a contention that the Nebraska Supreme Court was judicially legislating. This same criticism was levelled at this Court when it decided *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705 (1973); *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686 (1954); *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966); and all the other cases that were unpopular with various persons and groups. The reasoning of petitioner in this respect not only unravels in a field of sophistry, but it pays no heed to history. This Court has continually, as demonstrated by the cases cited above, refused to revise statutes of any state upon any grounds of justice, policy or constitutionality. As a matter of historical fact, this Court specifically said it has no authority to revise

the statutes of a state. *Orr v. Gilman*, 183 U.S. 278, 22 S.Ct. 213 (1902).

The opinion of the Nebraska Supreme Court, which the petitioner seeks to have reviewed, appears as Appendix "1" in petitioner's Petition for Writ of Certiorari. That opinion, which petitioner argues is judicial legislation, is nothing more than a well reasoned opinion interpreting the state's statute and setting out, in irrefutable logic, why malice is still an element of the crime of second degree murder. As noted in the opinion, the interpretation of the murder statute is nothing more than a holding which the Nebraska Supreme Court has adhered to over the last 11 years. Such is hardly the material to base a claim of "judicial legislation" on.

If this Court were to accept the argument of the petitioner, it would place itself in a position of having to constantly review each decision of every state supreme court where one claimed an erroneous interpretation of state law. This Court has neither the time nor the jurisdiction for such matters.

The petitioner seeks to raise a second issue by virtue of the ruling on the question of effective assistance of counsel. That ruling, however, was inextricably a part of the Nebraska Supreme Court's opinion that malice has been an essential element of second degree murder for the past eleven years. That conclusion was the reason for the finding that failing to object to a jury instruction that didn't include malice was negligence on the part of counsel.

This author recently argued a case against counsel for the petitioner on the same specific issue, to wit: the

interpretation of Nebraska's second degree murder statute. When counsel for the petitioner was asked by a Nebraska Supreme Court Justice what authority he had that would justify the overruling of the decision in this case, counsel responded: "I only need four votes." The Court responded by saying, "That is not a legal argument."

Petitioner has cited no authority in its petition that would justify this court reviewing the interpretation of a state statute by a state supreme court.

CONCLUSION

The Respondent has been unable to find a single case in American jurisprudence that would authorize this Court to substitute its judgment for that of a state supreme court on the question of an interpretation of state law. Apparently the petitioner was unable to find such a case either, because its brief fails to cite it.

The Petition for the Writ of Certiorari should be denied.

Respectfully submitted,

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